

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

JASON CHRIST,

Plaintiff,

vs.

STATE OF MONTANA, CITY OF
MISSOULA POLICE DEPARTMENT,
OFFICE OF THE PUBLIC DEFENDER,
DETECTIVE STACY LEAR, JUDGE
KAREN TOWNSEND, MISSOULA
COUNTY DISTRICT ATTORNEYS
JENNIFER CLARK and ANDREW
PAUL,

Defendants.

CV 13–75–M–DWM–JCL

FINDINGS AND
RECOMMENDATION

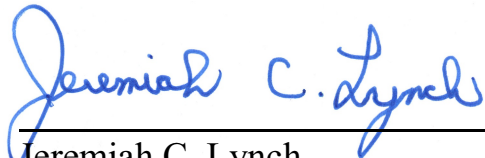
On August 21, 2013, Defendants Jennifer Clark and Andrew Paul filed a motion pursuant to Fed. R. Civ. P. 4(m) to dismiss Plaintiff Jason Christ's Complaint filed against them. Clark and Paul assert that the dismissal is warranted because Christ did not serve his Complaint upon them within 120 days after he filed it on April 18, 2013, as required under Rule 4(m). Specifically, Rule 4(m) provides that unless a plaintiff "shows good cause" for his failure to timely serve a complaint on a defendant, "[i]f a defendant is not served within 120 days after the complaint is filed, the court--on motion or on its own after notice to the

plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m).

Although Christ has not yet filed a response to Clark and Paul’s motion, on August 28, 2013, Christ filed his own motion to dismiss this entire action without prejudice. In view of Christ’s motion, it is clear he elects not to present good cause for his failure to serve Clark and Paul, and it is clear he does not seek an extension of time within which to serve his pleading on them. Instead, he requests dismissal of his Complaint without prejudice which is the same result Clark and Paul could obtain on their Rule 4(m) motion.

Therefore, IT IS HEREBY RECOMMENDED that Clark and Paul’s Fed. R. Civ. P. 4(m) motion to dismiss be GRANTED, and Christ’s claims against Clark and Paul should be DISMISSED without prejudice.

DATED this 29th day of August, 2013.



Jeremiah C. Lynch
United States Magistrate Judge